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No. 84-671

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

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EDDIE RYE, JR. and ANDREA RYE, his wife,
*Petitioners,*

vs.

THE SEATTLE TIMES COMPANY; RICK ANDERSON and JANE DOE ANDERSON, his wife,
*Respondents.*

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**On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Washington**

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION FOR REVIEW

Where a public official defamation plaintiff's sole response to a defense motion for summary judgment is to allege that the defendant's news sources may have borne some ill will toward plaintiff, is it error to dismiss the action on the ground that such facts do not constitute the showing of actual malice necessary to raise a genuine issue of fact?

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondents respectfully pray that the writ of certiorari requested by the petitioners be denied by this Court.

## STATEMENT OF THE CASE

This is an action for defamation, filed by a government official against a local daily newspaper that reported charges of wrongdoing within his agency. As discussed in the opinion of the Washington Court of Appeals dismissing the case, Appendix to Petition ("Pet. App.") at A-2 to A-27, the uncontroverted facts are as follows.

When the allegedly defamatory news story was printed on May 3, 1978, plaintiff Eddie Rye, Jr.[1] was the head of a Seattle antipoverty agency known as CAMP (Central Area Motivational Program).[2] CAMP, which was primarily a conduit for distribution of state and federal funds, had been plagued for some time with charges of mismanagement and malfeasance made by employees and supervising agencies. Many of these charges had been reported in stories printed by defendant The Seattle Times, one of the two major daily newspapers in the Seattle area.[3] Defendant Rick Anderson, a Seattle Times reporter, had investigated and written a number of these stories. In doing so he had frequently obtained information, which had proved to be reliable, from CAMP employees Jerrold Letnes and Mike Stillwell. *See* Affidavit of Anderson ¶¶ 8-12, Appendix ("Resp. App.") at A-2 to A-3.

Shortly before May 3, 1978, Stillwell and Letnes informed Anderson that they had gone to the FBI with a number of charges of fraud and other illegal acts Rye had perpetrated in his capacity as head of CAMP. Anderson then wrote and The Seattle Times published the story at issue in this lawsuit. The story accurately recounted the making of the charges, which included allegations of fraud and of the demand and receipt of kickbacks in cash and cocaine.[4] Anderson later confirmed with federal authorities that Stillwell and Letnes had made such charges. See Affidavit of Anderson ¶ 19, Resp. App. at A-4.

Rye commenced this lawsuit in the Superior Court of the State of Washington for King County on May 5, 1978. In his complaint he asserted libel claims against The Seattle Times and Anderson (referred to collectively below as "The Seattle Times"), alleging in general terms that the May 3 story was

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[1] The spouses of both plaintiff Eddie Rye, Jr. and defendant Rick Anderson were joined by plaintiff as parties. For convenience, Rye will be referred to as though he were the sole plaintiff, and Anderson will be referred to as though he were the sole individual defendant.

[2] Rye has not disputed that he is a public official for the purposes of this lawsuit. Court of Appeals Opinion, Pet. App. A-13.

[3] Other than wholly-owned subsidiaries, The Seattle Times Company has no parent companies, subsidiaries or affiliates.

[4] The story is set forth in full in the Court of Appeals opinion. Pet. App. at A-6 to A-8.

false and had been published by The Seattle Times with actual malice.

After discovery, The Seattle Times filed a motion for summary judgment on the ground that Rye could raise no genuine issue of fact material to the essential issue of actual malice. Rye's response consisted of two affidavits contending, not that The Seattle Times knew the story was false, but that Letnes and Stillwell were hostile to Rye, that Anderson must have known this, and that accordingly The Seattle Times should have had serious doubts as to their veracity. Court of Appeals Opinion, Pet. App. at A-14.

The trial court denied summary judgment on June 4, 1981, despite the body of clear and well-reasoned authority from courts in Washington and elsewhere holding that allegations of a reporter's knowledge of hostile feelings between his sources and a defamation plaintiff are, as a matter of law, insufficient to show actual malice. The Seattle Times petitioned the state Court of Appeals for discretionary review of this ruling. The Court of Appeals, finding under Washington Rules of Appellate Procedure 2.3(b)(1) that the Superior Court had committed an obvious error, Pet. App. at A-16, reversed the denial of summary judgment and dismissed the case in an opinion entered March 12, 1984. Pet. App. at A-27. Rye petitioned the state Supreme Court for discretionary review, which petition was denied on July 24, 1984. Pet. App. at A-1. Rye then filed this petition for certiorari.

## QUESTION FOR REVIEW

Where a public official defamation plaintiff's sole response to a defense motion for summary judgment is to allege that the defendant's news sources may have borne some ill will toward plaintiff, is it error to dismiss the action on the ground that such facts do not constitute the showing of actual malice necessary to raise a genuine issue of fact?

## REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

### A. Petitioner Seeks Review Only of the Application of the Undisputed Legal Standard to the Evidence Presented in the Trial Court, an Issue So Narrow as Not to Justify Review by This Court on Certiorari.

The petition for certiorari frames the questions for review so generally that it is not immediately apparent just what errors Rye would have this court review. His argument, however, indicates that his primary claim of error is that his allegations concerning the hostility of Anderson's sources were sufficient to raise a material issue of fact under the legal standard applied by the courts below.

The Washington appellate courts' independent review of the facts Rye alleged in light of the proper legal standard certainly was appropriate under *Bose Corp. v. Consumers Union of United States, Inc.*, ____U.S.____, 104 Sup. Ct. 1949 (1984). However, being thus confined to analysis of the evidence offered in this particular case, the opinion below does not present principles of wide enough application to justify review by this court. Petitioner suggests nothing unique or broadly applicable about this case that would make certiorari's additional, extraordinary level of review any more necessary or appropriate here than in any other defamation case. Accordingly, further review on a writ of certiorari is not called for.

### B. The Decision Below Is Not in Conflict With Any Other Authority.

The decision of the Court of Appeals is in complete harmony with a well-established line of similar authorities springing from principles recognized by this Court since *St. Amant v. Thompson*, 390 U.S. 727 (1968), against which Rye has not cited a single conflicting case.

In reiterating his argument in the petition for certiorari, Rye continues to contend as he has from the beginning that his allegations of source hostility, without more, made out a sufficient case of actual malice to defeat summary judgment.

See Petition at 14-15. Even setting aside the question of whether Rye made any adequate showing that Anderson knew of this alleged hostility, *see* Court of Appeals Opinion, Pet. App. at A-20, this argument must still fail because it completely ignores the numerous authorities squarely holding that evidence of a source's hostility to the plaintiff is inadequate, standing alone, to make out even a prima facie case of actual malice. *Hotchner v. Castillo-Puche,* 551 F.2d 910 (2d Cir.), *cert. denied,* 434 U.S. 834 (1977) (reversing judgment for the plaintiff against publisher and dismissing action where the only evidence of the publisher's "actual malice" was knowledge of its author's animosity to plaintiff); *Loeb v. New Times Communications Corp.,* 497 F. Supp. 85 (S.D.N.Y. 1980) (granting summary judgment for defendant where the only evidence of "actual malice" was plaintiff's "inherently hostile relationship" with sources, 497 F. Supp. at 93 n.12); *Kidder v. Anderson,* 354 So. 2d 1306 (La.), *cert. denied,* 439 U.S. 829 (1978) (judgment for plaintiff reversed because the trial court had focused on the antagonism of the sources to the plaintiff, rather than on their credibility and access to information). *See also Tilton v. Cowles Publishing Co.,* 76 Wash.2d 707, 723, 459 P.2d 8, 17 (1969), *cert. denied,* 399 U.S. 927 (1970) (reliance on sources proper, even though the sources themselves had reason to oppose the plaintiffs); *Pritchard v. Times Southwest Broadcasting, Inc.,* 277 Ark. 458, 642 S.W.2d 877 (1982) (reporter may rely on biased source); *Roberts v. Dover,* 7 Media L. Rep. 2296 (M.D. Tenn. 1981) (reporter may rely on contradicted source).

The rule of these cases springs from the basic principles of modern defamation law developed in this Court's decision in *St. Amant v. Thompson, supra.* In that case, St. Amant had allegedly defamed the plaintiff, a sheriff, by quoting statements of a dissident Teamster member accusing the sheriff of improprieties with union officials. 390 U.S. at 728-29, 733. Noting that

> reckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing . . . [t]here must be sufficient evidence to permit the conclusion that

> the defendant in fact entertained serious doubts as to the truth of his publication . . . [,]

390 U.S. 731, the Court found that St. Amant's failure to make an independent investigation of the charges, furnish proof of his source's veracity, or take the other steps plaintiffs suggested should be required, was not sufficient to show recklessness under this standard. In support of this conclusion the Court pointed to several facts that are also present in this case, including a prior relationship between St. Amant and his source, and St. Amant's verification of other aspects of his source's information. Most importantly for Rye's argument that actual malice may be inferred from a source's hostility, however, the Court specifically found that St. Amant's knowledge that his source

> was engaged in an internal struggle in the union- . . . [and] seemed to St. Amant to be placing himself in personal danger by publicly airing the details of the dispute

weighed *against* a finding of actual malice. 390 U.S. at 733.

Rye has not cited, and The Seattle Times has not found, any case in which a source's bias, standing alone, was held to be sufficient evidence to make out a prima facie case of actual malice. Such a case would be of little weight in any event, as it would be contrary not only to the precedents just discussed but to the practical policy balance underlying the rule of *New York Times v. Sullivan,* 376 U.S. 254 (1964), as both *St. Amant* and this case illustrate. First, since some degree of hostility could always be inferred from the act of furnishing derogatory information, if a source's hostility were adequate evidence of actual malice there would be evidence of actual malice whenever a defamatory statement was based on a source's information. This would clearly be an improper result under *St. Amant.* Second, and perhaps even more importantly, even truly disaffected and "hostile" persons will often be the best, if not the only, sources of information concerning official misconduct. Free debate will be stifled if the criticisms of such persons can be reported only at the risk of an automatic inference of actual malice, and thus of greatly increased exposure to protracted libel litigation and ultimate liability should those criticisms prove incorrect.

## CONCLUSION

The issue raised by the petitioner in this case is limited to the question of whether the evidence he presented in the trial court was sufficient to meet the legal standard applied by the trial court. This issue received the independent appellate review prescribed by *Bose Corp. v. Consumers Union* in the Washington State Court of Appeals. Further review of this narrow issue is not called for. Furthermore, the decision below is in harmony, not conflict, with other pertinent authorities, including the leading decisions of this Court. Accordingly, there is no reason for this court to grant certiorari, and the petition should be denied.

Respectfully submitted this 17th day of November, 1984.

DAVIS, WRIGHT, TODD, RIESE & JONES
Attorneys for Respondents,
Seattle Times Company, Rick
Anderson and Jane Doe Anderson

By _____
Evan L. Schwab

# APPENDIX

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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NO. 844 810

---

EDDIE RYE, JR. and ANDREA RYE, his wife,
*Plaintiffs,*

v.

SEATTLE TIMES COMPANY, a corporation;
RICK ANDERSON and JANE DOE ANDERSON, his wife,
*Defendants.*

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**Affidavit of Rick Anderson In Support Of Motion For Summary Judgment**

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STATE OF WASHINGTON
COUNTY OF KING } ss.

The undersigned, being first duly sworn, deposes and says:

1. I am a reporter for the Seattle Times and write a regular column for the Seattle Times.

2. I am the reporter and the author for the May 4, 1978 article about CAMP that is the subject of this lawsuit.

3. Because of my continuing observation of the administration of poverty programs in Seattle, I became aware of the existence of CAMP. During the period from 1973 to 1978, CAMP was the major anti-poverty agency operating in the Central Area of Seattle.

4. CAMP's job, in essence, was to funnel funds from the federal government to a number of its own projects and other projects outside of CAMP. Such projects included cultural programs, Head Start and programs to provide food and social services to the poor and disadvantaged.

5. I also became aware of the role of Eddie Rye, Jr. as executive director of CAMP. In this role, Rye had and exercised substantial responsibility and discretion over large amounts of public funds. I was aware of Rye's previous jobs as personnel officer for the Seattle-King County Economic Opportunity Board and from 1969-1973, as Director of CAMP's Educational Talent Search Project.

6. I also became aware of Eddie Rye, Jr. as a prominent figure and community activist who thrust himself into a number of substantial public controversies and who sought publicity from the media for his activities. The articles attached as exhibits to this Affidavit and incorporated herein [not reproduced in this Appendix] by reference are articles from the Seattle Times that reflect Rye's activities. These articles are accurate copies of articles that were published in the Seattle Times about Rye and CAMP. Other media, both newspapers and the electronic media, also gave substantial publicity to Rye in his activities both as executive director of CAMP and in a number of public controversies.

7. During 1977 and 1978 there was a general and continuous controversy about CAMP. It was fueled by public reports that CAMP was short of funds, by investigations from federal oversight agencies and reports of those investigations, and by statements of employees of CAMP and individuals within the community that CAMP served.

8. I wrote a series of articles beginning in November, 1977 about CAMP, Eddie Rye's role at CAMP, and the difficulties and problems facing both. These articles detailed problems with a summer food program, irregularities in the handling and transfer of funds within CAMP, CAMP's shortage of funds, and audits by agencies charged with oversight of CAMP.

9. In writing these articles I became familiar with the general situation of CAMP and relied on information from the oversight agencies and from sources who were or had been employed at CAMP.

10. Two of the people I relied upon were Mike Stillwell and Jerrold Letnes. Mike Stillwell had been head of the CAMP Consumer Action Project for four years and a CAMP employee

for six years. The program he headed had been rated "outstanding" by federal oversight agencies. Stillwell provided me with reliable and accurate information for my articles throughout 1977 and into 1978. I understood that Stillwell provided me with this information to help clean up CAMP so that better services would be provided to the people of the community. I also understood that Stillwell strongly supported CAMP and did not want to see it destroyed.

11. Jerrold Letnes had been a full-time employee of CAMP from 1973 to 1976 with substantial involvement in seeking grants for CAMP. He left CAMP to form his own consulting firm, but continued to do some work for CAMP. Letnes had been a member of the senior staff of CAMP and had provided me with reliable and accurate information for articles in 1977 and 1978. I understood that Letnes wanted to see CAMP cleaned up, not destroyed, so that the people of the Central Area community would be better served.

12. I knew of the positions of Stillwell and Letnes within CAMP and their access to the information. I knew they had given information to the public investigatory officials as well as to other news media. No one had contradicted the information they gave. I did not believe that Letnes or Stillwell had personal animosity towards Rye, but believed they only wanted to insure that public funds were used properly.

13. I had called Eddie Rye on an ongoing basis for comments before publication of articles about CAMP and Rye. Rye provided such comments until early 1978, but by March 1978 Rye would no longer provide me with comments. Rye made clear to me that I should not bother calling for further comments.

14. On 8/3/78 I had a lunch interview with Letnes and Stillwell, their attorney, Clyde MacIver, and KING reporter, Don McGaffin.

15. At the lunch meeting Stillwell and Letnes described a recent visit to the FBI where they met with an agent after being granted immunity through the United States Attorney. Stillwell and Letnes informed me they had given the FBI the full details of the events of CAMP and had admitted to giving Rye kick-

backs totalling $1,100 in cash and kick-backs of cocaine. Stillwell and Letnes stated the kick-backs were given to Rye to insure that they would continue having jobs and that others had witnessed some of the kick-backs. They stated they had told the FBI that $300 in kick-backs had been given from an increase in a special hourly consultant's fee being performed by Letnes. They stated they had told the FBI that $300 had been given in cash to Rye in the men's room of a Seattle cafe.

16. I believed Letnes and Stillwell were telling me the truth. I understood they were admitting their own guilt and were "dirtying" themselves by admitting to their participation in such actions. After the story was published and this lawsuit was initiated, both Stillwell and Letnes confirmed to me that they still believed their allegations were true and that they had transmitted those allegations to the FBI.

17. I and Don McGaffin then independently wrote and used stories based on the information provided by Letnes and Stillwell.

18. I neutrally and accurately reported what I believed to be the true, objective facts that Stillwell and Letnes had made charges to the FBI. The article of May 4, 1978 that is the subject of the lawsuit is an accurate representation of the charges I was told Stillwell and Letnes made. I believed Stillwell and Letnes were telling the truth.

19. I later confirmed with federal authorities that Stillwell and Letnes had made such charges.

/s/ RICK ANDERSON

Rick Anderson

SUBSCRIBED AND SWORN to before me this 29th day of April, 1981.

/s/ DANIEL WAGGONER

Notary Public in and for the State of Washington, residing at Seattle